

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,  
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 183

GRIEVANCE PROCEDURE

Subchapter 1 General Provisions

- §15-183-01 Purpose
- §15-183-02 Applicability
- §15-183-03 Definitions
- §15-183-04 Termination of rental agreement based on  
Public Law 104-120

Subchapter 2 Pre-hearing Procedure

- §15-183-10 Informal settlement of grievances
- §15-183-11 Request for hearing
- §15-183-12 Selection of hearing officer or hearing  
panel
- §15-183-13 Escrow deposit
- §15-183-14 Scheduling of hearings

Subchapter 3 Hearing Procedure

- §15-183-20 Procedures governing the hearing
- §15-183-21 Decision of the hearing officer or  
hearing panel

**Historical Note:** Chapter 15-183, Hawaii Administrative Rules, is based substantially upon chapter 17-502, Hawaii Administrative Rules. [Eff 1/1/81; am and comp 5/26/98; R Oct 25 1999; am and comp ]

FEB 25 2002

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§15-183-1 Purpose.** These rules shall govern the practice and procedure for hearing a grievance presented by a tenant to the housing and community development corporation of Hawaii. [Eff Oct 25 1999; comp ] (Auth: 24 CFR §966.52, HRS §201G-4) (Imp: 24 CFR §966.50, HRS §201G-4)

FEB 25 2002

**§15-183-2 Applicability.** (a) The grievance procedure shall be applicable to all individual grievances as defined in section 15-183-3 between the tenant and the corporation.

(b) The grievance procedure shall not be applicable to disputes between tenants not involving the corporation, class grievances, or any grievance concerning an eviction or termination of tenancy based upon a tenant's creation or maintenance of a threat to the health or safety of other tenants or the corporation's employees. This procedure shall not be used as a forum for initiating or negotiating policy changes between tenants and the corporation.

(c) All grievances involving an act or omission of the corporation relating to a rental agreement shall be commenced within thirty days of such act or omission.

(d) All grievances involving the corporation's rules shall be commenced within ninety days of an act or omission based on such rule.

(e) The failure to timely request such a hearing within the prescribed limits shall preclude any request for a grievance hearing from occurring unless waived by the corporation. [Eff Oct 25 1999; comp **FEB 25 2002**] (Auth: 24 CFR §966.52; HRS §201G-4) (Imp: 24 CFR §966.51; HRS §201G-4)

**§15-183-3 Definitions.** Whenever used in this chapter, unless specifically defined:

"Complainant" means any tenant whose grievance is presented to the corporation or at the project management office.

"Corporation" means the housing and community development corporation of Hawaii.

"Grievance" means any dispute which a tenant may have with respect to the corporation's action or failure to act in accordance with the individual tenant's rental agreement or the corporation's rules which adversely affect the individual tenant's rights, duties, welfare, or status.

"Hearing officer" means a person selected in accordance with section 15-183-12 to hear grievances and render a decision with respect thereto.

"Hearing panel" means a panel selected in accordance with section 15-183-12 to hear grievances and render a decision with respect thereto.

"Tenant" means the lessee or the remaining head of household of any family residing in the corporation's federally-assisted or state-aided housing project as defined in section 15-190-2. [Eff Oct 25 1999; comp

**FEB 25 2002**] (Auth: 24 CFR §966.52; HRS §201G-4) (Imp: 24 CFR §966.53; HRS §201G-4)

**§15-183-4 Termination of rental agreement based on Public Law 104-120.** The corporation may also terminate a rental agreement as provided for in section 15-190-48. [Eff Oct 25 1999; comp **FEB 25 2002**] (Auth: 42 USC §1437; Pub. L. 104-120; HRS §201G-59) (Imp: HRS §201G-52)

SUBCHAPTER 2

PRE-HEARING PROCEDURE

**§15-183-10 Informal settlement of grievances.**

(a) Any grievance shall be personally presented, either orally or in writing, to the project office of the project in which the complainant resides as a condition precedent to a hearing under this chapter.

(b) A summary of such discussion shall be prepared within fifteen days and one copy shall be given to the tenant. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing under this chapter may be obtained if the complainant is not satisfied. [Eff Oct 25 1999; am and comp FEB 25 2002] (Auth: 24 CFR §966-52; HRS §201G-4) (Imp: 24 CFR §966.54; HRS §201G-4)

**§15-183-11 Request for hearing.** (a) The complainant shall submit a written request for a hearing to the corporation's project office within thirty days after receipt of the summary of discussion pursuant to section 15-183-10. The written request shall specify:

- (1) The reasons for the grievance; and
- (2) The action or relief sought.

(b) If the complainant does not request a hearing in accordance with subsection (a), the corporation's disposition of the grievance following the informal settlement shall become final. Failure to request a hearing shall not constitute a waiver by the complainant of the complainant's right thereafter to contest the corporation's action in disposing of the complaint in an appropriate judicial proceeding.

(c) If the complainant shows good cause for failing to proceed in accordance with the informal procedure to the hearing officer or hearing panel, the provision of subsection (a) may be waived by the

hearing officer or hearing panel. [Eff Oct 25 1999; am and comp FEB 25 2002 ] (Auth: 24 CFR §966.52; HRS §201G-4) (Imp: 24 CFR §966.55; HRS §201G-4)

**§15-183-12 Selection of hearing officer or hearing panel.** Grievances shall be presented before a hearing officer or hearing panel. A hearing officer or hearing panel shall be selected as follows:

- (1) The hearing officer shall be an impartial, disinterested person selected jointly by the corporation and the complainant. If the corporation and the complainant cannot agree on a hearing officer, they shall each appoint a member of a hearing panel and the member so appointed shall select a third member. If the third member cannot be agreed to, such member shall be appointed by an independent arbitration organization or any other third party agreed upon by the corporation and the complainant;
  - (2) In lieu of the procedures set forth in paragraph (1), the corporation may provide for the appointment of a hearing officer or hearing panel by any method which is approved by the majority of tenants (in any building, group of buildings, project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose;
  - (3) The corporation shall consult the project's tenant organization before the appointment of each hearing officer or hearing panel member. Any comments or recommendations submitted by the tenant organization shall be considered by the corporation before the appointment.
- [Eff Oct 25 1999; am and comp FEB 25 2002 ]  
 (Auth: 24 CFR §966.52, §966.55; HRS §201G-4)  
 (Imp: 24 CFR §966.55; HRS §201G-4)

**§15-183-13 Escrow deposit.** (a) Before a hearing is scheduled in any grievance involving the amount of rent which the corporation claims is due, the complainant shall pay to the corporation the amount of rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The complainant shall thereafter deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer or hearing panel.

(b) The requirements in subsection (a) may be waived by the corporation, and unless so waived, the failure to make the payments shall result in a termination of the grievance procedure, provided that failure to make the payments shall not constitute a waiver of any right the complainant may have to contest the corporation's disposition of the complainant's grievance in any appropriate judicial proceeding. [Eff Oct 25 1999; comp FEB 25 2002] (Auth: 24 CFR §966.52; HRS 201G-4) (Imp: 24 CFR §966.55; HRS §201G-4)

**§15-183-14 Scheduling of hearings.** Upon complainant's compliance with sections 15-183-11 and 15-183-13, a hearing shall be scheduled by the hearing officer or hearing panel within twenty-eight business days after receipt of comments and recommendations of the project's tenant association regarding the appointment of a hearing officer or panel pursuant to subsection 15-183-12-(3), Hawaii Administrative Rules, for a time and place reasonably convenient to both the complainant and the corporation. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate official of the corporation. [Eff Oct 25 1999; am and comp FEB 25 2002] §966.52; HRS §201G-4) (Imp: 24 CFR §966.55; HRS §201G-4)

SUBCHAPTER 3

HEARING PROCEDURE

**§15-183-20 Procedures governing the hearing.** (a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

(b) The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:

- (1) The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records, and rules of the corporation that are relevant to the hearing. Any document not made available after request by the complainant may not be relied on by the corporation at the hearing.
- (2) The right to be represented by counsel or other person chosen as the complainant's representative;
- (3) The right to a private hearing unless the complainant requests a public hearing;
- (4) The right to present evidence and arguments in support of the complaint, to controvert evidence relied on by project management, and to confront and cross-examine all witnesses on whose testimony or information the project management relies; and
- (5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the corporation fails to appear at the hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for a period not to exceed five business days or may make a determination that the party has waived the party's right to a hearing. Both the complainant and the corporation shall be notified of the

determination by the hearing officer or hearing panel, provided that a determination that the complainant has waived the complainant's right to a hearing shall not constitute a waiver of any right the complainant may have to contest the corporation's disposition of the grievance in an appropriate judicial proceeding.

(e) The complainant must first show that the complainant is entitled to the relief sought and thereafter the corporation must sustain the burden of justifying the corporation's action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the corporation, the complainant, counsel, and other participants or spectators to conduct themselves in orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(g) The complainant or the corporation may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of the transcript. [Eff Oct 25 1999; comp FEB 25 2002 ]  
(Auth: 24 CFR §966.52; HRS §201G-4) (Imp: 24 CFR §966.56; HRS §201G-4)

**§15-183-21 Decision of the hearing officer or hearing panel.** (a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the corporation. A copy of the decision with all names and identifying references deleted, shall also be maintained on file by the



corporation and made available for inspection by a prospective complainant, the complainant's representative, the hearing panel, or the hearing officer.

(b) The decision of the hearing officer or hearing panel shall be binding on the corporation which shall take all actions or refrain from any action, necessary to carry out the decision unless the corporation determines within thirty days of the written decision and promptly notifies the complainant of its determination, that:

- (1) The grievance does not concern the corporation's action or failure to act in accordance with or involving the complainant's rental agreement or the corporation's rules, which adversely affect the complainant's rights, duties, welfare, or status; or
- (2) The decision of the hearing officer or hearing panel is contrary to applicable federal, state, or local law, Department of Housing and Urban Development regulations, or requirements of the annual contributions contract between Department of Housing and Urban Development and the corporation.

(c) A decision by the hearing officer, hearing panel, or corporation in favor of the corporation or which denies relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

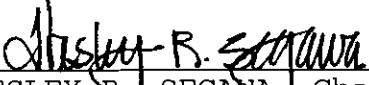
(d) If the complainant has requested a hearing on a complaint involving the corporation's notice of proposed termination of the tenancy and the hearing officer or hearing panel upholds the corporation's action to terminate the tenancy, the corporation shall not commence an eviction action in a court until it has served a notice to vacate on the complainant. In no event shall the notice to vacate be issued prior to the decision of the hearing officer or the hearing panel

having been mailed or delivered to the complainant. The notice to vacate shall be in writing and shall specify that if the complainant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against the complainant and the complainant may be required to pay court cost and attorney fees. [Eff Oct 25 1999; comp FEB 25 2002 1 (Auth: 24 CFR §966.52; HRS §201G-4) (Imp: 24 CFR §966.57; HRS §201G-4; section (d) added pursuant to TILEIA v. CHANG, Civ. No. 79-0107)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,  
AND TOURISM


The amendments to and compilation of chapter 183, title 15, Hawaii Administrative Rules, on the Summary Page dated January 24, 2002 were adopted on January 24, 2002 following public hearings held on January 14, 2002, after public notice was given in The Honolulu Advertiser, Midweek, Hawaii Tribune Herald, The Garden Isle, and The Maui Times on December 3, 2001.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
WESLEY R. SEGAWA, Chairperson  
Board of Directors  
Housing and Community  
Development Corporation of  
Hawaii

APPROVED AS TO FORM:

  
Deputy Attorney General

  
BENJAMIN J. CAYETANO  
Governor  
State of Hawaii

Date: 2-13-02

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Filed

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LIEUTENANT GOVERNOR'S  
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